POLAND

In 1998, the U.S. trade surplus with Poland was $99 million, a decrease of $374 million from the 1997 surplus of $473 million. U.S. exports to Poland were $882 million, a decrease of $289 million (24.7 percent) from 1997. Poland was the United States' 55th largest export market in 1998. U.S. imports from Poland were $783 million in 1998, an increase of $85 million (12.2 percent) from 1997. The most recent available statistics (1998) indicate the stock of U.S. foreign direct investment (FDI) in Poland was $1.2 billion.

IMPORT POLICIES

In the early 1990s, as part of the transition from a Communist to a free-market economy, Poland undertook commendable steps to stimulate trade by lowering or suspending tariffs. Despite some backsliding, such as an import surcharge in 1993-1996, Poland has generally followed the course of further liberalization and has reduced tariffs according to its commitments in the WTO as well as in preferential agreements such as its association agreement with the EU, and Central European Free Trade Agreement (CEFTA). With the exception of steel, petroleum products, and automobiles, all industrial products from the EU (since January 1, 1999), European Free Trade Area (EFTA), and CEFTA now have no duty levied on them.

As a result of Poland's 1991 Association Agreement with the EU, Poland has reduced or eliminated tariffs for EU goods across the board while MFN rates have been reduced much less, in line with Uruguay Round commitments. Under the terms of this agreement, tariffs for most industrial products (with the exception of vehicles, oil products, and steel) were eliminated completely as of January 1. 1999. Tariffs on some non-industrial EU products have also been reduced on a selective basis. The result has been that many U.S. products are subject to notably higher tariffs than similar EU products. Specifically, U.S. exporters of automobiles, small aircraft, autos, electrical generating equipment, mining equipment, lumber, distilled spirits, wine, soybean meal, durum wheat, peanut butter, chocolate and non-chocolate confections, and grapefruit have complained about this disadvantage. So far, Poland has responded to these complaints in the cases of autos and soybean meal, by unilaterally granting a reduction in customs duties on large engine automobiles and soybean meal. Presently, the International Trade Commission is conducting a study to assess the effects of the EU's association agreements with selected Central and Eastern European partners on U.S. trade. Its findings are due in April 1999.

There are exceptions to these general liberalization trends. Poland still maintains WTO-consistent tariff rate quotas on beef, pork, poultry meat and live poultry, milk, cream, sugar, eggs, honey, strawberries, apples, pears, juices and juice extracts, cucumbers, tomatoes, spices, rape seed, and certain other agricultural products. As a means of protecting its sugar industry, the Polish Government imposes additional duties on imported products containing sugar, but a number of EU products are exempt from these additional duties.

In the past year, Poland has shown an increased interest in using trade restrictions as protective measures. In mid-1998, Poland surprised its CEFTA partners by enacting tariff rate quotas on corn, starch, and tomato paste and halted further liberalization of other agricultural trade with these countries because of increased agricultural imports from them. In October 1998, Poland increased tariffs on pork from 60 to 80 percent (CEFTA and the EU have a slightly lower rate) in response to surplus production, increased imports, and a drop in exports caused mainly by the Russian crisis. Recent safeguard actions have resulted in increased duties for grains, cut flowers, shoes from China, and a tariff rate quota for coal from Russia.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Despite some improvement, importers of U.S. products continue to complain about a lack of transparency in the administration of tariff rate quotas, arbitrariness of some customs inspectors, and the burden of paperwork caused by the lack of electronic customs clearance. Poland's extensive system for the certification and approval of products is not harmonized with international standards. In the past, U.S. companies have complained about the length of time needed for product certification, testing requirements, fees, and the lack of transparency. Recently the number of such complaints from U.S. companies have declined. The most controversial part of the Polish certification regime is the "B" safety mark, which is required on certain products. The negative effects of the "B" mark have been mitigated by Poland's decision to allow companies to distribute products upon registration for "B" mark testing, rather than waiting for the results of the tests. This annual waiver has been renewed again for 1999. The lack of recognition of international marks such as the CE mark and the lack of self-certification are also problematic.

Recently, Polish authorities have been arbitrarily applying sanitary and phytosanitary standards which have periodically disrupted trade. For the past several years, Polish officials have maintained a zero-tolerance policy on several weed seeds including ragweed, common in imported grains and oilseeds. This policy has resulted in substantial export losses for U.S. grains, oilseeds, and oilseed products. In February 1999, Poland agreed to a review of its past risk analysis by an independent panel of experts. At the beginning of 1998, Polish authorities blocked the importation of gelatin and products containing gelatin without any scientific evidence of harm. Confronted in the WTO, Polish authorities withdrew the ban. Polish plant protection officials appear to be inconsistently interpreting the information required on phytosanitary certificates which results in shipment delays.

The Polish Government requires import permits for live plants, fresh fruits, vegetables, meat, and live animals. Regulations on the production, importation, and labeling of genetically modified organisms have been drafted by the Polish Government. However, their announcement, scheduled for January 1, 1999, has been delayed. Current regulations and standards for livestock genetics were designed to limit competition from international companies. U.S. livestock genetic companies face particular difficulties meeting requirements for semen concentration and supplying genetics for the top 100 type production index.

GOVERNMENT PROCUREMENT

Poland's Procurement Law came into effect in January 1995 at the national level and in January 1996 at the local level. It is modeled on the UN's procurement code and is based on competition, transparency, and public announcement. The law does not, however, cover purchases by state-owned enterprises. The only single source exceptions in the law to the stated preference of unlimited tender are for reasons of national security or national emergency. The law established a Central Policy Office of Public Procurement which lists all tenders valued at over 20,000 ECU. This office's worldwide web page is available at: http://www.uzp.gov.pl. Poland is an observer to the WTO Committee on Government Procurement.

There are two elements of domestic preference in the Procurement Law. First, there is a 50 percent domestic content requirement for all goods and services provided (for construction, 50 percent of raw materials and labor). In addition, domestic bidders are given a 20 percent price preference. According to implementing regulations, companies with foreign participation organized under the Joint Ventures Act of June 14, 1991, may qualify for domestic status under the Procurement Law. There is an appeals process for tenders viewed as unfairly awarded.

EXPORT SUBSIDIES

Upon accession to the WTO, Poland ratified the Uruguay Round Subsidies Agreement. Poland has eliminated past practices of tax incentives for exports, but it permits the drawback of tariffs on raw material imports from the EU and EFTA countries. Such imports are processed and reexported as finished products within thirty days. For the past several years, WTO consistent export-subsidy quotas for sugar have been fully utilized. Domestic sugar sales are taxed in order to fund these subsidies. In December 1997, the Polish Government approved a new regulation which provides additional subsidies to sugar refineries in order to make sugar exports more competitive and profitable. Most Polish coal, whether sold domestically or aboard, is sold below mining cost. Some state-owned enterprises receive direct and indirect subsidies, such as tax exemption.

In October 1998, in response to growing supplies (partly caused by the collapse of the Russian market) and lower prices for domestically produced pork, the Ministry of Agriculture and Food Economy (MAFE) authorized a subsidy for pork exports. The Ministry of Finance allocated 25 million zlotys (DOLS 7.2 million) for pork export subsidies to be allocated on the basis of tenders announced by the MAFE. By the end of 1998, only 70 tons of pork had been exported under this program.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Since the fall of communism in 1989, Poland has made progress on developing a legal foundation for protecting Intellectual Property Rights (IPR). The U.S.-Poland treaty on business and economic relations (BIT), which contains provisions on IPR protection, went into force in 1994. Poland enacted a copyright law in 1992 and a patent law in 1993. Poland joined the Berne Convention (Paris text, 1971) and the Rome Convention (without article 12). Poland has implemented many of the requirements of the WTO TRIPs (Trade-Related Intellectual Property Rights). A key exception is 50 year protection for previously existing sound recordings. This provision, as well as the all the others required by TRIPs, must be implemented by January 1, 2000, when Poland's exceptions to TRIPs expire.

U.S. companies have complained that Poland's current pipeline and data protection for pharmaceuticals is inadequate. According to U.S. companies, the pipeline provisions of the 1993 patent law, while in accord with the BIT, provide little protection. Another problem is the lack of data exclusivity, which appears to be contrary to TRIPs' requirements. The main beneficiary of these loopholes are Polish state-owned pharmaceutical producers which make cheap copies of patented name-brand medicines.

In 1998, industry sources noted an increase in piracy on the Polish music market. In 1996 and 1997 this market share was approximately 25 percent, however in 1998, pirated sound recordings captured 45 percent of the Polish music market resulting in losses to rights' holders estimated at about $40 million. The vast majority of bootleg recordings came from the former Soviet Union. Losses are further aggravated for U.S. rights' holders by the lack of copyright protection for recordings prior to 1972, which allows Polish companies to produce and sell such recordings without breaking Polish law.

Video piracy also remains a serious problem, with piracy accounting for 25-30 percent of the video cassette market, according to industry sources.. This results in lost sales worth an estimated $25 million annually for U.S. companies, not to mention losses to Polish film producers caused by pirate copies of their first-run films often appearing weeks in advance of the opening.

There have been increased efforts by Polish police and customs to fight piracy. However, industry sources have noted a reluctance on the part of some prosecutors to treat IPR violations as a serious crime.

SERVICES BARRIERS

In the WTO Agreement on Basic Telecommunications Services that went into effect on February 5, 1998, Poland made commitments on all basic telecom services, with a phase-in of some commitments. Domestic long-distance services will be liberalized by the end of 1999 and the Ministry of Posts and Telecommunications hopes to issue two domestic long-distance licenses during the first quarter of 1999. Poland will provide market access and national treatment for all telecommunication related services by 2003. It adopted a reference paper on regulatory commitments. Poland is a signatory nation of the WTO's fourth protocol to the General Agreement on Trade and Services. Poland retains a 49 percent foreign ownership limit for international and domestic long-distance services, including cellular, but this limit has been dropped in a new telecommunications bill that is soon expected to go before the Parliament and may be enacted this year. Poland has also issued a tender for an advisor on the privatization of the state-owned telephone company (TPSA). In October 1998, Poland successfully sold fifteen percent of the company's stock.

Under its OECD Accession Agreement, Poland agreed to allow banks and insurance companies from OECD countries to have branches and representative offices in Poland as of January 1, 1999. Poland bound this commitment in its WTO Financial Services offer and also made market access and national treatment commitments to allow 100 percent foreign-owned insurers, established as joint stock companies, to provide the full range of insurance services (with the exception of pensions). In regard to banking, the National Bank of Poland has not issued any branch bank licenses since it granted two in 1991. Article 44 of Poland's 1992 Association Agreement with the EU provides for national treatment and full rights of establishment for subsidiaries, branches and agencies to EU companies, with a five-year phase-in period (until February 1, 1999), along with a "No New Restrictions" clause. Poland pledged to the OECD that all such liberalization measures would also be extended to all OECD members.

In November 1997, the Polish National Radio and Television Council (KRRITV) adopted a regulation imposing 50 percent European content quotas on all broadcasters, which became effective on January 1, 1998. The language of this Polish decree lacks the flexibility of the EU Broadcast Directive, which provides for content quotas to be applied "where practicable and by appropriate means." Attempts have been made by the KRRITV to enshrine the inflexible quotas in legislation. In addition to the new European content quotas, significant Polish content quotas remain in place.

INVESTMENT BARRIERS

Polish accession to the OECD in 1996 accelerated changes facilitating foreign investment, including national treatment, easing capital flow restrictions, and allowing foreigners to purchase small parcels of land without prior government approval (up to 400 square meters of urban land or one hectare of rural land). Although some foreign businesspeople report that they continue to be disadvantaged in the purchasing of urban land. Polish law permits foreign ownership of up to 100 percent of corporations with a few exceptions described below. Foreign investors may conduct business in the form of limited liability companies or joint stock companies, as stipulated by Poland's commercial law.

Certain controls remain on foreign investment. Despite a recent attempt in the Parliament to raise the limit on foreign ownership in television broadcasting to 49 percent, the limit remains at 33 percent. This restriction prompted a U.S. cable company to abandon its plans for a broadcasting operation in Poland. This move played a role in pushing another U.S. media company to sell its share in a successful new television station. The management of seaports and airports requires a special permit, and foreign stakes in air and maritime transport. Fisheries are capped at 49 percent. The government has tried various ways to encourage higher domestic value-added requirements (e.g. content requirement for the "Special Economic Zones", and licensing requirements for auto assemblers that would have required welding and painting facilities), but these attempts have been stopped by outside pressures, including the United States Government. A proposal has recently be introduced in the

Parliament to limit foreign ownership in the print media to 49 percent, but no action has yet been taken.

Despite the obvious need for investment in the agricultural sector, companies - both U.S. and foreign - receive irregular support from the Polish Government. Several livestock firms which have been willing to invest several hundred million dollars have been stonewalled by Polish officials. In addition, some U.S. companies have complained that they come under unfair scrutiny by Polish tax officials.

ANTICOMPETITIVE PRACTICES

On October 1, 1996, the Office for Competition and Consumer Protection was established out of the former Antimonopoly Office and State Trade Inspection Office. This new office is empowered to fine state-owned monopolies that unduly prevent competition. A 1995 amendment to the Antimonopoly Office Act removed ambiguities regarding this authority, thereby strengthening its ability to act.

ELECTRONIC COMMERCE

In Poland, sales through the Internet are unrestricted. Normal VAT fees apply to merchandise purchases through the Internet. Customs duties and VAT apply to imported software. The Ministry of Finance and Main Customs Office are at the beginning stages of preparing tax regulations for software purchased and delivered via the Internet.